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## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Part 571**

**Docket No. NHTSA-2009-0189**

**RIN 2127-AL53**

### **Federal Motor Vehicle Safety Standards; Designated Seating Positions**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule; response to petition for reconsideration.

**SUMMARY:** This document responds to a petition for reconsideration of the agency's November 2013 final rule making amendments to the procedures for determining which areas of a vehicle are designated seating positions and the procedure for determining the number of seating positions. Global Automakers petitioned the agency for reconsideration, seeking to correct what it believes is an error in formula for determining the number of designated seating positions in longer seating positions. The agency agrees that the change was inadvertent and is issuing this final rule to correct this mistake.

**DATES:** The effective date of this final rule is **[insert date of publication in the Federal Register]**.

Petitions for reconsideration must be received not later than **[insert date that is 45 days after the date of publication in the Federal Register]**.

**ADDRESSES:** Petitions must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC, 20590.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Louis Molino of the NHTSA Office of Crashworthiness Standards by telephone at (202) 366-1740, and by fax at (202) 493-2739.

For legal issues, you may contact David Jasinski of the NHTSA Office of Chief Counsel by telephone at (202) 366-2992, and by fax at (202) 366-3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

On October 8, 2008, NHTSA published in the **Federal Register** a final rule (October 2008 final rule) revising the definition of “designated seating position” (DSP), as that term is used in the Federal motor vehicle safety standards (FMVSS), and providing a calculation procedure for determining the number of seating positions at a seat location.<sup>1</sup> The revised definition specifies more clearly the areas within the interior of a vehicle that are regarded as being designated seating positions for trucks, multipurpose passenger vehicles, passenger cars, and buses. The rule also established a calculation procedure for determining the number of DSPs at a seat location for trucks and multipurpose passenger vehicles with a gross vehicle weight rating less than 4,536 kilograms (10,000 pounds), passenger cars, and buses.

We received ten petitions for reconsideration of the October 2008 final rule. In a December 23, 2009 final rule,<sup>2</sup> we provided a partial response to these petitions, which provided one year additional lead time, removed language from the text of the DSP definition preempting any State requirement premised on there being more DSPs than the number contemplated in the new definition, and corrected an erroneous cross reference.

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<sup>1</sup> 73 FR 58887 (Oct. 8, 2008) (Docket No. NHTSA-2008-0059).

<sup>2</sup> 74 FR 68185.

In a November 15, 2013 final rule,<sup>3</sup> the agency completed its response to the petitions for reconsideration of the October 2008 final rule. That final rule made clarifying changes to the manner in which designated seating positions are measured. It also included technical corrections addressing side-facing seats and longer seating surfaces.

With respect to longer seating surfaces, the new procedure for calculating the number of DSPs uses one of two calculations depending on the overall seating surface width. For adjacent seats with a continuous seating surface with a width less than 1,400 mm, the seating surface width is divided by 350 mm and rounded down to the nearest whole number to determine the number of DSPs. For adjacent seats with a continuous seating surface width of 1,400 mm or more, the seating surface width is divided by 450 mm and rounded down to the nearest whole number.

We made a technical correction to the calculation of the number of DSPs for seating locations with a seating surface width of 1,400 mm. This issue arose in interpretation requests received by the agency from Nissan North America, Inc. (Nissan) and Girardin Minibus (Girardin).<sup>4</sup> Nissan and Girardin both raised the issue of seating surfaces longer than 1,400 mm (1,700 mm and 1,778 mm, respectively) and asked NHTSA to confirm that such a seating surface could have four DSPs. Using the formula set forth in section 571.10(b)(2), the seating surfaces would have three DSPs.<sup>5</sup>

In light of the issue raised by Nissan and Girardin, we clarified in the regulatory text that the calculation procedure in section 571.10(b)(2) for seating surfaces of 1,400 mm or more was intended to be a minimum and manufacturers can provide more DSPs than the number calculated

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<sup>3</sup> 78 FR 68748.

<sup>4</sup> NHTSA's response to these interpretation requests can be found at <http://isearch.nhtsa.gov/files/09-003169%20nissan.draft.dj.aug20.htm> and <http://isearch.nhtsa.gov/files/09-000724%20fortin.draft.dj.aug20.htm>.

<sup>5</sup> A seating surface width of at least 1,800 mm would be required to have four DSPs.

by the formula for these longer seating surfaces. However, in the final rule's regulatory text, we also inadvertently changed the divisor for seating surfaces of 1,400 mm or more from 450 to 350.

Global Automakers petitioned the agency for reconsideration of the November 2013 final rule. Global Automakers states that it believes that it was the agency's intent to continue to use 450 as the divisor for seating surfaces of 1,400 mm or more and petitioned the agency to amend section 571.10(b)(2) to reflect this intent.

NHTSA is granting Global Automakers' petition. The agency agrees that it was not our intent in the November 2013 final rule to change the divisor for calculating the number of DSPs for seating surfaces with a width of 1,400 mm or more. We are issuing this final rule to restore the 450 mm divisor consistent with the agency's intent, as stated in the preamble to the November 2013 final rule.

### **Rulemaking Analyses and Notices**

#### **A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures**

The agency has considered the impact of this rulemaking action under Executive Orders 12866 and 13563 and the DOT's regulatory policies and procedures. This action was not reviewed by the Office of Management and Budget under Executive Order 12866. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not "significant" under them.

This action corrects an error in the November 2013 final rule regarding the procedure for calculating the number of designated seating positions to reflect the agency's intent as stated in the preamble text. This rulemaking action is consistent with the requirement in Executive Order

13,563 that agencies conduct retrospective analyses of existing regulations. Today's action will not have any cost impacts for vehicle manufacturers. This action will not have any safety impacts.

B. Privacy Act

Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78) or you may visit <http://docketsinfo.dot.gov/>.

C. Other Rulemaking Analyses and Notices

In the October 2008 final rule and in the December 2009 final rule providing a partial response to the petitions for reconsideration, the agency discussed relevant requirements related to the Regulatory Flexibility Act, Executive Order 13132 (Federalism),<sup>6</sup> Civil Justice Reform, the National Environmental Policy Act, the Paperwork Reduction Act, the National Technology Transfer and Advancement Act, and Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks). As today's final rule merely clarifies regulatory text to reflect the agency's intent in the November 2013 final rule, it will not have any effect on the agency's analyses in those areas.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as follows:

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<sup>6</sup> The issue of preemption was addressed in the preamble of the December 2009 final rule. See 74 FR 68187-89.

**PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

2. Amend § 571.10 by revising paragraph (b)(2) to read as follows:

**§ 571.10 Designation of seating positions.**

\* \* \* \* \*

(b) \* \* \*

(2) For seat locations with a seating surface width, as described in paragraph (c), greater than or equal to 1400 mm (55.2 inches):  $N = \text{No less than } [\text{seating surface width (in mm)} / 450]$  rounded down to the nearest whole number.

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Issued in Washington, DC, on September 11, 2014 under authority delegated in 49 CFR 1.95 and 501.5.

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David J. Friedman  
Deputy Administrator

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